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**FEB 28 2006**

**OFFICE OF PETITIONS**

In re Application of :  
David M. Alpern et al. :  
Application No. 09/881,501 :  
Filed: June 14, 2001 :  
Attorney Docket Number: oracle01.013 :

**ON PETITION**

This is a decision on the petition filed December 7, 2005, which is treated under 37 CFR 1.181, in accordance with the reasoning of the decision in Delgar Inc. v. Schuyler, 172 USPQ 513.

The petition is **GRANTED**.

A non-Final Office Action was mailed January 10, 2005. A response was due not later than March 10, 2005. A response in the form of an amendment was filed March 15, 2005 (certificate of mail date March 10, 2005). On March 28, 2005 the applicant was advised that the amendment filed was non-compliant under 37 CFR 1.121. The time for response was one month from the mailing of the March 15, 2005 Notice. No response having been filed, a Notice of Abandonment was mailed November 22, 2005.

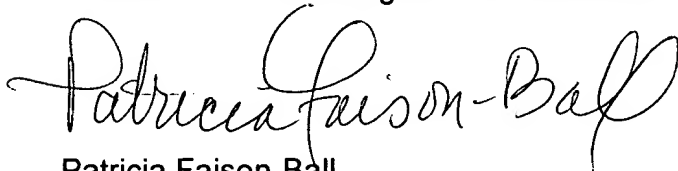
Petitioner asserts that the Notice of Non-Compliant Amendment was never received.

The file record discloses that the Notice of Non-Compliant Amendment was mailed to the address of record which is the same address used on all correspondences from the USPTO including the Notice of Abandonment. Petitioner asserts that a search of the file jacket shows that the Notice was not received and has provided a copy of the patent file and docketing records for this specific application, wherein receipt of the Notice of Non-Compliant Amendment, mailed March 28, 2005, would have been filed, had it been received.

In that the statement from the petitioner and the exhibit from the docket record for the instant matter show no entry indicating receipt of the Notice of Non-Compliant Amendment mailed March 28, 2005, it is apparent that the Notice of Non-Compliant Amendment was not received. The evidence submitted corroborates non-receipt of the Notice of Non-Compliant Amendment.

In view of the facts set forth in the petition, it is concluded that the Notice of Non-Compliant Amendment was never received at the address of record. Accordingly, the holding of abandonment is withdrawn and the Notice of Abandonment is vacated. No petition fee is due and none has been charged.

The file is being forwarded to Technology Center 2161 for the remailing of the Notice of Non-Compliant Amendment originally mailed on March 28, 2005. Telephone inquiries concerning the remailing of the Notice of Non-Compliant Amendment should be referred to the Technology Center. All other inquiries regarding this decision may be directed to the undersigned Petitions Attorney at (571) 272-3212.

A handwritten signature in black ink, reading "Patricia Faison-Ball". The signature is written in a cursive, flowing style with a large initial "P" and a long, sweeping underline.

Patricia Faison-Ball  
Senior Petitions Attorney  
Office of Petitions